

556 United States District Court, Northern District of Illinois

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| Name of Assigned Judge or Magistrate Judge | Charles P. Kocoras | Sitting Judge if Other than Assigned Judge | |
| CASE NUMBER | 01 C 1440 | DATE | 8/23/2001 |
| CASE TITLE | Byron Martini vs. City of Elmhurst et al | | |

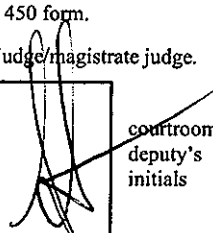
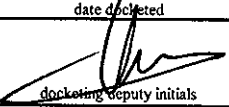
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

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| (1) | <input type="checkbox"/> | Filed motion of [use listing in "Motion" box above.] |
| (2) | <input type="checkbox"/> | Brief in support of motion due _____. |
| (3) | <input type="checkbox"/> | Answer brief to motion due _____. Reply to answer brief due _____. |
| (4) | <input type="checkbox"/> | Ruling/Hearing on _____ set for _____ at _____. |
| (5) | <input type="checkbox"/> | Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____. |
| (6) | <input type="checkbox"/> | Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____. |
| (7) | <input type="checkbox"/> | Trial[set for/re-set for] on _____ at _____. |
| (8) | <input type="checkbox"/> | [Bench/Jury trial] [Hearing] held/continued to _____ at _____. |
| (9) | <input type="checkbox"/> | This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2). |
| (10) | <input checked="" type="checkbox"/> | [Other docket entry] ENTER MEMORANDUM OPINION: Defendant's motion (Doc 8-1) to dismiss is granted. We dismiss the complaint in its entirety. |
| (11) | <input checked="" type="checkbox"/> | [For further detail see order attached to the original minute order.] |

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| <input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input checked="" type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge. | SCT  courtroom deputy's initials | ED-7 FILED FOR DOCKETING 01 AUG 23 PM 3:56 | number of notices | Document Number 12 |
| | | | AUG 24 2001 date docketed | |
| | | |  docketing deputy initials | |
| | | | date mailed notice | |
| | | | mailing deputy initials | |
| Date/time received in central Clerk's Office | | | | |

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BYRON MARTINI,

Plaintiff,

vs.

CITY OF ELMHURST, and ELMHURST
POLICE DEPARTMENT POLICE
CHIEF JOHN MILNER [SIC],

Defendants.

01 C 1440

POCKETED
AUG 24 2001

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

This matter is before the Court on Defendants' motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). For the reasons set forth below, we grant the motion.

BACKGROUND

Byron Martini, a resident of the city of Chicago, filed a *pro se* complaint against the City of Elmhurst and Elmhurst Police Department Police Chief John Milner (collectively "Defendants") on or about February 28, 2001, alleging theft of property and violation of his civil rights under 42 U.S.C. § 1983. According to the complaint, in approximately February 1996 unnamed officers of the Elmhurst Police Department entered the property of Martini's brother, Robert Martini, and removed a 1986 Chevrolet Monte Carlo belonging to Byron. The police officers allegedly turned the

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car over to an unnamed female, who proceeded to transfer the ownership of the automobile into her name.

On June 14, 2001, this Court heard Defendants' Motion for a More Definite Statement, at which time Defendants accepted Martini's oral admissions as part of the complaint. We granted the motion in part and denied it in part. Defendants later filed a timely motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) claiming that Martini's civil rights claim is time-barred.

LEGAL STANDARD

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the sufficiency of the claim, not to decide the merits of the case. See Triad Assocs., Inc. v. Chicago Housing Authority, 892 F.2d 583, 586 (7th Cir. 1989). In ruling on a motion to dismiss, the Court must construe the complaint's allegations in the light most favorable to the plaintiff and all well-pleaded facts and allegations in the complaint must be taken as true. See Bontkowski v. First Nat'l Bank of Cicero, 998 F.2d 459, 461 (7th Cir. 1993). The allegations of a complaint should not be dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff can prove can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hartford Fire Ins. Co. v. California, 509 U.S. 764 (1993); Sherwin Manor Nursing Ctr. Inc. v. McAuliffe, 37 F.3d 1216, 1219 (7th Cir.

1994). Nonetheless, in order to withstand a motion to dismiss, a complaint must allege facts that sufficiently set forth the essential elements of the cause of action. See Lucien v. Preiner, 967 F.2d 1166, 1168 (7th Cir. 1992).

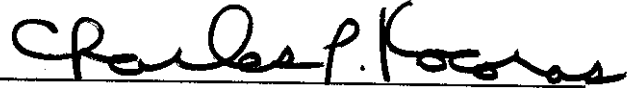
In reviewing a Rule 12(b)(6) motion for failing to bring a claim in a timely manner, the Court must apply the proper statute of limitations for a section 1983 action. The United States Supreme Court has held that the most analogous statute of limitations for section 1983 actions, and therefore the most appropriate one, is the state's personal injury statute of limitations. See Wilson v. Garcia, 471 U.S. 261 (1985). In Illinois, the statute of limitations for personal injury actions is two years. See 735 ILCS 5/13-202. It is with these principles in mind that we turn to the motion before us.

DISCUSSION

Defendants argue that Martini's complaint is time-barred. In section 1983 actions brought in Illinois, plaintiffs have two years from the date of the incident arising from an alleged civil rights violation in which to file a complaint. See 735 ILCS 5/13-202; Kalimara v. Illinois Dep't of Corrections, 978 F.2d 276, 277 (7th Cir. 1989). Mr. Martini filed the case at bar nearly five years after the alleged incident occurred, well after the two-year statute of limitations had run. For this reason, the complaint is time-barred and must be dismissed.

CONCLUSION

For the foregoing reasons, we dismiss the complaint in its entirety.

A handwritten signature in black ink, reading "Charles P. Kocoras". The signature is written in a cursive style with a horizontal line underneath it.

Charles P. Kocoras
United States District Judge

Dated: August 23, 2001